

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	GN Docket No. 09-157
Fostering Innovation and Investment in the)	
Wireless Communications Market)	
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	
)	

**REPLY COMMENTS OF
BARAT WIRELESS, L.P., CARROLL WIRELESS, L.P. AND
KING STREET WIRELESS, L.P. IN RESPONSE TO
NOTICE OF INQUIRY**

Barat Wireless, L.P. ("Barat"); Carroll Wireless, L.P. ("Carroll"); and King Street Wireless, L.P. ("King Street") (collectively, the "Licensees"), through counsel, submit their reply comments in the captioned proceeding.¹

The Commission's Notice of Inquiry ("NOI") in the captioned proceeding initiates one of the Commission's most important proceedings of this decade. Under the umbrella title of "innovation," the Commission's task in this proceeding is how to make wireless offerings both more efficient and more innovative. The Licensees submit that the over-arching answer to this question is to increase competition in every reasonable way. Six concrete proposals to accomplish this are proffered below.

Over the last several years, wireless has been plagued by unquestioned consolidation. The two largest carriers in the nation now serve approximately 65% of the nation's wireless subscribers, and 70% of all new wireless subscribers. This alone brings us perilously close to the duopoly environment of yesteryear that so limited cellular and which the Commission successfully uprooted when it commenced PCS auctions in 1994.

¹ Carroll holds 16 PCS licenses; Barat holds 17 AWS licenses; and King Street was the high bidder 152 700 MHz licenses, which it expects to be licensed shortly.

This market dominance, like virtually any form of market dominance, provides precious little incentive for innovation. This is illustrated by a number of specific actions, and is far more than theory. For example, as noted by Cellular South, Inc. in its comments in this proceeding, the nation's two largest carriers are undertaking efforts to limit 700 MHz equipment availability at reasonable prices, which will in turn limit consumer equipment and carrier choices, and generally undermine some of what competition is left in the marketplace. See Comments of Cellular South, in this proceeding. Similarly, the largest carriers have a remarkable track record of striving to limit access to their systems, be it by roaming, resale or service applications.

The simple fact of the matter is that when two carriers dominate the market, their overarching incentive is to retain the status quo. Innovation and change of any kind are the antithesis of that goal. These factors are pursued by dominant carriers only when market dominant carriers feel threatened by new entrants and new services. In contrast, new entrants and smaller carriers need innovation to survive. For the most part, they are the ones that come up with new ideas and focus on both niche markets and the otherwise underserved.

Among the market segments that smaller carriers focus upon are rural markets that simply are not as lucrative as the major markets that receive the bulk of the largest carriers' attention. The contributions of these new and smaller entries are largely the same, regardless of whether they are licensees, resellers, equipment manufacturers or application providers: They present offerings that otherwise would not be available, and serve persons that otherwise would be unserved.

Given the above, the most useful steps that the Commission can and should take to foster innovation and investment all involve opening the wireless industry to meaningful competition. This can be accomplished in a number of ways, including the following:

- 1) To the fullest extent possible, consumers should have access to mobile equipment that permits them to move from one carrier to another in order to take advantage of different carrier offerings. (The restrictive practices referenced above are absolutely contrary to this open, competitive urging.)

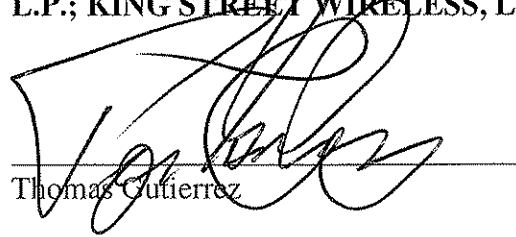
- 2) Where there is only one carrier who provides service in a given location that uses a particular technology, that carrier should be obligated to provide roaming service upon request, and upon reasonable and non-discriminating terms, to all technologically compatible entities. This roaming mandate should extend to licensed-licensed service and to licensed-unlicensed service, to the extent technologically possible.
- 3) Licensing of all new spectrum should be designed to afford bona fide opportunities for small businesses and other new market entrants to participate, including certain spectrum being reserved for small businesses and remaining spectrum having sufficiently high credits as to provide smaller entities with a viable opportunity to acquire the spectrum. In addition, when auctions are designed, a primary factor that should impact on market size is effect that such size will have on the ability of small businesses to compete. These are strategies that Congress directed the Commission to consider when it initially granted to the Commission auction authority.
- 4) When the Commission collects data on service availability in various areas, it should measure actually available service, and various types of service, rather than to assess only where entities have been licensed to provide service. This data should, to the maximum extent possible, be generated by entities that are as objective and meticulous as possible, and not be dominated by self-serving carrier claims of service availability.²
- 5) The Commission should limit strictly exclusive mobile phone contracts. (See e.g., the Petition for Rulemaking filed on May 20, 2008 by the Rural Cellular Association.)
- 6) The Commission's eligible telecommunications carrier ("ETC") rules should provide small wireless carriers with a level playing field, relative to wireline carriers, and be sufficiently generous as to facilitate wireless ETC operation in rural areas.

² For example, Root Wireless, Inc., (www.rootwireless.com) provides service that can, for the first time, provide real-world detailed data about availability, quality and speed of wireless services (voice and data) in a given area, gathered using actual customer handsets, then compiled in an easily-understandable format.

WHEREFORE, the Commenter's urge the Commission to adapt each of the above six steps in order to spur innovation and investment in wireless, and to serve the public interest.

Respectfully submitted,

**COUNSEL FOR CARROLL
WIRELESS, L.P.; BARAT WIRELESS,
L.P.; KING STREET WIRELESS, L.P.**

A handwritten signature in black ink, appearing to read 'Thomas Gutierrez', is written over a horizontal line.

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